Previous references.

Cr 211-08-1-2

J. F. 44-1902-3

Later references.

1909.

(Court)

File No. 52-09

Serial Nos. 1804

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1804

Part B. for January 1910

SUBJECT.

Appeal against the order of acquittal in Chief Court Sessions Case No 41 of 1908 (Govt Vs Venkatasamireddi & Subrayappa)

Table of contents

1. From The District Magistrate Kolar No 1506-53 & 12-8-09.
Requests that in the circumstances of the case the Govt Advocate may be requested to file an appeal against the order of acquittal of Subbrayappa accused in the above case
2. To the Govt Advocate & The Dt Magte Kolar No J 654-5 & 1-9-09
Directs the Govt Advocate to prefer an appeal to the Chief Court & report the result of the same in due course
3. From the Govt Advocate No 63 & 26-8-09
Informs that Venkatasamyreddy's appeal was got adjourned to the 20th September 1909
4. From the Govt Advocate in Lepore No 47 & 12-11-09
G. R. S. 58 Forwards a copy of the judgment of the Chief Court holding that the said appeal against the order of acquittal passed by a Judge of the Chief Court does not lie.

G.R.S. 11] 1909-10

GENERAL AND REVENUE SECRETARIAT.

(Courts)

NOTES.

Cts File No. 52-09-

FILE HEADING.

Appeal against the order of acquittal in Chief Court Sessions Case No 41 of 1908-09 (Govt Vs. Venkatasamareddi and Subrayappa)

From

The District magistrate of Kolar-

No. 156 judl-53 Dated 12-8-09 Received 14-8-09-

Diary No. 1433 | Enclos. 3 | Spare Copies | Serial No. 1

BRIEF ABSTRACT OF LETTER.

Requests that, in the circumstances of the case, the Govt Advocate may be requested to file an appeal against the order of acquittal of Subrayappa, accused in the above case.

NOTES AND ORDERS.

"Secretary's orders" - Submit quickly with draft order and references" Intd K.S.C. 14.8.09

A draft of an order is submitted. Please See also discussions in Cts file No. 211-08- regarding the validity of an appeal against

NOTES—First sheet

GPB—30,000—3-4-07.

Serial No.

The order of acquittal passed by a Judge of the Chief Court submitted for orders -

Hes SN
14-8-09 14/8

The case is a fit one for appeal so far as the acquittal of the 1st accused (Venkata Swami Reddy) of the grave offence, is concerned. Neither the District Magistrate nor the Govt Advocate says clearly whether an appeal has to be filed against the 2nd accused Subba Rayapa also, I have, however, included his name also in the order as the Evidence against both relates to the same incidents.

3 The appeal, if preferred will also set at rest the question whether an appeal lies or not against an original order of acquittal passed by a Judge of the Chief Court.

15/8/09 SN

Allowed
M

Secretary 16.8.09

Both on the merits & further incidentally in view to the General Question being finally settled, it is necessary

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

1662

that an appeal should be filed. (It is unnecessary to discuss the proposed ~~Petition~~ 2nd Cr)

S. J. 08
S/4
13/8/09

5 I do not consider it advisable that an appeal should be filed in this case. The Dy Cr himself says that "though the case may at first sight appear to be a trivial one, it is a matter of grave importance, the accuseds' being lawless rowdies &c". It is not altogether becoming and it rarely succeeds for Government to attempt to punish a man for an improved offence by pushing a case having no connection with the suspected matter, to undue lengths.

6 I have carefully perused the evidence, and am of opinion that the Judge has come to a very fair conclusion on it, and that it would be difficult to convince an appellate Court of his being in error in favour of

Serial No.

the accused's side.

The Chief Court decided in 1902 that ~~the~~ no appeal lies from an order of acquittal passed on the Sessions side. That Court has not been overruled, and although the Code of Criminal Procedure was reenacted in 1904, ~~the~~ the Government did not alter the wording of S. ~~44~~ 417 on which the question chiefly turned. It is therefore the law deliberately accepted by Government that orders of acquittal passed by a Judge of the Chief Court are final & that no appeal lies therefrom. ~~It~~ It is not right now to turn round and adopt a different view merely because the Chief Court happens to have taken a view in an analogous case which might raise an expectation that the Full Bench (as now Constituted) would dif-

NOTE—Contn. sheet.

GPB—50,000—13-5-08

Serial No.

per from the two Judges who decided the Case of 1902. Having deliberately accepted the law as then laid down, the proper Course in my opinion, is to alter it by legislation if we think that an alteration is required.

8. Personally I have always been of opinion that the view taken by the Ch. Court is right, and I ~~dis~~ had also to dissent from the ~~of~~ Ld. Judges who were in the majority in the later Case.

9. I would therefore decline to authorise an appeal being filed, both because the Case on merits is not a fit one for appeal, allowed because there is no appeal according to law.

17/8/09

2097 (above) Dewan
18/8/09

17/8/09 Mr Dewan Sett 18/8/09

GPB—50.000—13-5-08

OS File No. 52 of 1909

Serial No.

11 It seems to me that for the reasons stated in the District Magistrate's letter an appeal may be sanctioned.

It is also important that there should be an authoritative announcement by the Chief Court on the general question which has been raised in regard to the interpretation of Section 417 of the C. P. Code. The present case seems to be a suitable opportunity for the same. (Vide also file No 211 of 1908.09)

(drafted)

12 To be circulated to the 1st Councillor.

21.8.09

do 19.8.09

21/8/09

13 I cannot favour an appeal being preferred against the

G. R. S. 12]
General and Revenue
Secretariat.

File No. 52 of 1909

Serial No.	
	order of cessation in this case. In the interest of efficient Administration there should not be allowed to go unpunished.
	23/8/09
14	The adjournment of three weeks granted by this Court should be about to expire, if it has not already expired. But the appeal time prescribed by law, - six months, - does not expire till the beginning of Oct. It is however desirable (& has been considered) Denied 23/8/09
	27/8/09

NOTE—Contn. sheet

GPB—55,000—27-4-09

Submitted to His Highness.

15 The District Magistrate of Kolar has solicited the sanction of Government to an appeal being preferred to the Chief Court, against the finding and sentence passed by Mr. Justice Setlur in Bangalore Sessions case No.41 of 1908-09, Government VS Venkatsami Reddy and Subrayappa.

Encl to Paper under disposal

16 2. The facts of the case and the grounds upon which an appeal is proposed to be preferred are fully given in the District Magistrate's letter dated 12th August 1909. The case is one of causing hurt with a view to extort information leading to the detection of an offence. Both the accused were acquitted of this offence but the first accused has been convicted of the offence of causing simple hurt. The District Magistrate states that though the case may at first sight appear to be a trivial one, preferring an appeal "is a matter of great importance", the accused persons "being lawless rowdies long terrorising the people in the locality".

17 3. The Government Advocate who was consulted

by the District Magistrate is also in favour of an appeal being preferred.

16 4. The Second Councillor for reasons stated in his note dated 17th instant, does not consider it advisable that an appeal should be filed in this case on its merits. He also states that the Chief Court

A having decided in 1902 that no appeal lies from an order of acquittal passed by a Judge of the Chief Court on the Sessions side and Government not having altered the wording of the Code in regard to this point when the Code was re-enacted in 1904, it must be regarded as the law deliberately accepted by Government that no appeal lies against a judgment of the Chief Court sitting as a Court of Session. This question has been raised on previous occasions and dis-

(Vide Links Files) cussed in files No.44 of 1902 and 211 of 1908 in which reasons have been shown why the Chief Court judgment of 1902 may not be regarded as a final and conclusive pronouncement on the question.

17 5. It must also be noted that on a somewhat analogous question, viz. whether a death sentence passed by a Judge of the Chief Court in a Sessions

B case requires the confirmation of the Chief Court

in full bench, the Chief Court has recently held (Mr. Justice Nanjundayya dissenting) that such confirmation is required. It seems therefore likely that the appeal will be allowed by the Chief Court. In any case it is desirable to have an authoritative ruling on the point. For this reason, as well as in view of the importance of the case itself, as explained in the District Magistrate's letter, I am of opinion that an appeal may be preferred. The first Councillor is also of the same opinion. An appeal in the circumstances of this case is only a submission of the case for adjudication by a superior tribunal and cannot be regarded as undue prosecution of the accused on inadequate grounds.

6. I solicit early orders in the matter, as it is desirable that the Chief Court should hear the proposed Government appeal against the order of acquittal at the same time that it hears the appeal preferred by the first accused against his conviction for the offence of causing hurt. The latter appeal, it is understood, comes on for hearing within the next three or four days.

P. Nanda Rao
23 May 25

Record of Cases submitted for the Orders of His Highness the Maharaja.

23.8.09
420

Subject.

Appeal against the order of acquittal passed in Chief Court Sessions case No.41 of 1908 -09, Government VS. Venkat sami Reddi and Subrayappa.

145

397
31.8.09

Order.

I agree with the Dewan
KRW
28/8/09

Recd 31.8.09

28/9/09

Submitted for perusal & submission to Cr.
for information.
28/9/09

Submitted
4/10/09

22 Done today. (The Sessions Judge has been already directed to obtain a further report)
3.10.09

Urgent - 26.2.60

G.R.S

24th August-09

Dear Mr Narayanrao

The Government are considering the advisability of filing an appeal against the order of acquittal in Kolar Sessions case no 41 of 07 on (Govt -v- Venkatasivarao Reddy Pending final action I am desired to instruct you to kindly move the chief court for an urgent adjournment till about the first week of next month.

Please let me know the exact date on which the case will be taken as soon as you ascertain this.

Yours sincerely

(Sd) K.S. Chandrasekhara

Sealed & addressed by.

Despatched.

Copy sent to Br (Ill as directed by the Secy.

24/8/09

Please put this file when it is received back

24/8/09

Mean the appeal by the accused.

G. H. S. 12]
General and Revenue Secretariat.

Ct File No. 52 of 1909-10

Serial No.	
2	To the Govt Advocate in Mysore " District Magistrate, Kolar No J 6524-5 dt 1.4.09. Directs the Govt Advocate to file prefer an appeal to the Chief Court and to report the result of the same in due Course
3	From the Govt Advocate No 63 dt 26.8.09. Informs that Venkatasamireddy's appeal was got adjourned to the 20th September 1909.
4	From the Govt Advocate in Mysore No. 117 dt 12.11.09. Forwards a Copy of the judgment of the Chief Court holding that the said appeal against the order of acquittal passed by a Judge of the Chief Court does not lie. Submitted for perusal. Mr Govt and Hon SN 18.11.09 19-11-09. Further orders. Vide Submitted to Devan Bro's order It is considered desirable to allow an appeal against an order of acquittal passed by a Judge of the Chief Court sitting in Sessions. Legislation will

NOTE—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

~~1667~~ 2220

have to be undertaken.

20/11/09 SA

25/11/09

3349 26.11.09

28 The question arises whether explanation as above indicated is necessary. Circulate & Consult at Committee meeting.

20 Dec 09

Circulate

28 CBS 21/12/09

23/12

5564 27.12.09

29 may be discussed at Council meeting. [Is there an appeal against an acquittal by a High Court Judge in a Sessions case?]

A

25/12/09

A.

31 Asstt Secy BVM

Please ascertain this.

CBS 29/12/09

G. R. S. 12]
General and Revenue Secretariat.

File No. 52 of 190 1

Serial No.

52 Offices please keep the Letters patent of the Several High Courts and the Cr. P. Code as in force in Br. India

29/1/09 SH

Yes 4/1

33 Held: The provisions of the Cr. P. Code as in force in B. India and the same in this respect as those enacted in the Code in force in the State, and under Sec 28 of the Letters Patent issued to the several High Courts in B. India no appeal lies to those High Courts from any order or sentence passed in a trial by any of those courts in the exercise of their ordinary original Criminal jurisdiction.

28 3-1-10. 34 Under the Criminal Procedure Code a verdict of acquittal by a High Court sitting on the original side in British India is final and Govt can not appeal. (See 41 Cr. Br. Cody)

35 But under the Letters Patent- a formal proviso is given by which appeals may be preferred to the King in Council (Privy Council) provided the High Court Certify that the Case is a fit one for appeal. Please see para 41 of the Letters Patent

NOTE.—Contn. sheet.

GPB—55,000—27-4-09

Serial No.

issued to the High Court at Ft William
The words used in this para may
(in theory at least) be construed as
including cases of appeal against
acquittal also. ~~But how far this~~
~~can be reconciled with the express~~
~~provisions of Sec 417 and 439~~
~~the Code~~ But I
have not been able to find out
any instance of an appeal by Govt
against an order of acquittal passed
by a High Court Judge on the
original Side whether the
appeal be to the High Court itself
or to the King-in-Council

5/1/10. SH

Submitted to Ld C.r.

5/1/10 SH

6-28
6.1.10

Seen HPM

6/1/10

Note for next meeting

6/1/10

NOTE—Contn. sheet.

GPB—50,000—13.5.08

17

Submitted to His Highness.

39 These papers relate to the subject of appeals against orders of acquittal passed by a Judge of the Chief Court sitting as a Sessions Judge.

40. With the approval of His Highness, recorded on my note dated 23rd August 1909, (in which the facts of the case are detailed), an appeal was preferred against the order of acquittal passed in Chief Court Sessions case No.41 of 1908-09 (Government Vs. Venkatasami Reddi and Subrayappa). In their order dated 1st November 1909 in Criminal Appeal No.22 of 1909-10, the Chief Court held that under the existing Law (Section 417 of the Criminal Procedure Code) no appeal is allowed against an order of acquittal in such cases, and dismissed the appeal

41 3. The question was then considered in Council whether it was necessary to undertake legislation to allow such appeals, and it has been held undesirable to do so.

42 4. Extract from the Resolution of the Council on the subject is submitted for His Highness approval

4006/20 V ii

18

Extract from the Proceedings of the 244 Meeting of the Council of His Highness the Maharaja, held at Bangalore on the 10 January 1910

VIII. Subject. (Clause 11 of the Schedule).

Question whether legislation should be undertaken to allow appeals against orders of acquittal passed by a Judge of the Chief Court sitting as a Sessions Judge.

OPINION.

43 The Council does not consider it desirable to undertake legislation in this matter.

(sd) T. Anandarao
Dewan of Mysore

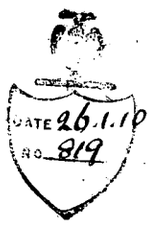
C.S. Balasundaram
Offg. Secy to Govt.

GPB—300—29-4-09

14

Record of Cases submitted for the Orders of His Highness the Maharaja

Subject.



Question whether legislation should be undertaken to allow appeals against orders of acquittal passed by a Judge of the Chief Court sitting as a Session Judge.

530

786
28/1/10

44

Order.

Approved
~~KRW~~
27/1/10

Sec
28/1/10

45 Zu
29/1/10

29/1/10

29/1/10

29/1/10.

No.

District Magistrate's Office,
Kolar District
Dated Kolar 12th August 1909.

From

C. Srikantesvara Aiyar, Esq., B.A.B.L.
District Magistrate, Kolar District.

To

K.S. Chandrasekhara Aiyar, Esq., B.A.B.L.
Secretary to the Government of H.H. the
Maharaja of Mysore Gen.&.Rev. Departments.

Sir

I have the honor to state that in Session Case No. 41 of 1908-1909 (Government VS. Venkataswami Reddi and Subrayappa) on the file of Chief Court presided over by Mr. Justice S.S. Setlur, the Government prosecuted the accuseds under Section 330 of the Indian Penal Code. Both the accused have been acquitted of the offence with which they were charged, but the 1st accused has been convicted of an offence under Section 323 and sentenced to a fine of Rs.200/-, in default to 3 months rigorous imprisonment. The latter has preferred an appeal to the Chief Court against the finding and sentence of the Judge, and on the receipt of notice of appeal I instructed the Government Advocate not only to support the conviction but also to submit to the Court how the Learned Judge erred in acquitting the accused under the section with which he had been committed to take his trial. In response to my instructions, the Government Advocate has suggested that an appeal should be preferred by the Government against the order of acquittal, and has with that view, taken an adjournment of 3 weeks to enable me to move the Government on the subject. His letter in original is herein

enclosed for the information of the Government.

2 The facts of the case are that on the 21st November 1908 at about 8 P.M. the house of one Gorla Muniappa at Kotagarlahalli Chikballapur Taluk was broken into. the inmates of the house the said Muniappa and his concubine Akkayamma were beaten and property worth Rs.2,000/- was taken away. Immediately after the occurrence, as soon as the cry of robbery raised by the inmates of the house ceased, the 1st accused who is the brother of Gorla Muniappa appeared on the scene, and sent for Subraya and Narasimiah two of the neighbours of Gorlamuniappa and questioned the former about the robbery, taxed him with the offence, and on his denying all knowledge about it, struck him with a heavy club which felled him to the ground and disabled him from walking freely. He then took him and Narasimiah to the village of Bandemmanahalli where he resides and sent for the Shanbhogue the 2nd accused. In the house of Mottakka his mistress he and the Shanbhogue are stated to have resumed the thread of the enquiry, demanded information of the robbery from Subraya and to have beaten him again on his denying all knowledge about the offence. They then tutored him to implicate the names of some innocent persons and on his refusing to do so, they thrashed him again severely and practically lamed him until he consented to their proposal, and finally released him on his agreeing to pay a bribe of Rs.20/- to both the accused.

It took sometime for Subraya to recover from the effects of the beating more especially from the effects of the blow given by the 1st accused at Kottegarlahalli, and then he reported the matter to the Police and filed a criminal complaint before the Sub Divisional Magistrate Chikballapur with the result that the accused were committed to take their trial before the Court of Sessions under Section 330 Indian Penal Code.

4. The Learned Judge who tried the case entertained no doubt whatever as to the blow having been given by the 1st accused, but held that the intention to extort a confession or information was wanting, and hence he convicted him under Section 323 Indian Penal Code. Now, it is evident that the only motive with which the offence would have been committed under the circumstances was to obtain some information leading to the detection of the offence. The complainant Subraya being a neighbour was charged with the commission of the offence, and was questioned about the case to disclose the names of the culprits. In the examination in chief, he stated that he was asked how the robbery took place and on his denying all knowledge about it, he was abused and beaten with a club. In the cross examination, he has been more explicit and deposes upon the point as follows:

> " He (Patel) said that the robbery had been committed with my connivance and one would be punished if one did not find out the perpetrators of the robbery. Then he abused me and gave me a blow with a club. I then fell down crying Ayoo."

The evidence of Narasimiah who was suspected along with the complainant is to the same affect. But the most important witness in the case is prosecution 3rd witness Appaya a nephew of the 1st accused who appeared on the scene at the same time as 1st accused and who went and called the complainant and Narasimiah prosecution 2nd witness from their houses and brought them before the 1st accused. He deposes as follows:-

> " Subrayappa said that he did not know anything. 1st accused said, living so near, how could it be that you do not know what took place and gave him a blow on the left side of his thigh."

The remaining witness 4 in number who were present at the time of beating also speak in the same strain. It is

clear from their statements that the intention of the 1st accused in giving the severe blow with his club was to frighten the accused and extort a confession from him. But the Learned Judge says, (to quote his own words) that the blow was given in consequence, as the 1st accused thought of Subraya not having given the information he wanted, but not to make furnish the information as a consequence of the beating." In other words, he seems to think that the blow was given from a sense of chagrin and disappointment in as much as the 1st accused failed to elicit any useful information from the complainant. This is not borne out by the evidence on record. On the other hand, the subsequent conduct of the 1st accused negatives any such idea. If the 1st accused wanted to give a finish to the enquiry by striking him with a club, there was no meaning in his having taken the complainant to Bandemmanahalli and then in the house of his mistress to have subjected him in the company of the Shanbhogue to another process of inquisition. The other circumstances relied upon by the Learned Judge in the 1st para of his Judgment favour more the idea of extortion than the view taken by him. For the fact that Gorla Muniappa and his concubine led the 1st accused to suspect the complainant that he was aware of the perpetrators of the offence, should have induced the 1st accused to obtain the information from him by some means or other, at the earliest opportunity and at least before the submission of his report to the Police. The view taken by the Learned Judge of this part of the case would seem to be unsustainable.

5 Then as regards the 2nd beating at Bandemmanahalli the evidence is equally clear and strong. That the complainant was taken to Bandemmanahalli and the Shanbhogue the 2nd accused was sent for, admits of no doubt whatsoever. The question is whether the complainant was or was not beaten in

5

the house of the mistress of the 1st accused. The witnesses upon this point are the complainant and the prosecution 2nd witness Narasimiah who was taken to the village of Bandemmanahalli along with the complainant. There is no reason to disbelieve their testimony which is to the effect that both the Shanbhogue and the Patel beat the complainant with their hands as he the complainant did not disclose the names of the offenders. The Learned Judge treats his evidence with the same distrust as if he was an accomplice. It is no doubt true that he was suspected in the beginning, but he himself admits that he was not molested in any way by the accused, nor by the Police who took up the investigation later on. Then as regards the improbability noticed by the Learned Judge that such intelligent and clever people as the accused would not have beaten the complainant so as to have allowed the witnesses to have seen through the wall, when they had taken the precaution of turning him out of the house, it may be observed that the said precaution was taken not because that they were afraid of being seen in the act of beating (the idea of subsequent prosecution does not seem to have entered their heads) but because they knew that in order to get important disclosures from the complainant, it was absolutely necessary that he should be left alone with them. Again, the fact that Motakka mistress of the 1st accused was not examined by the prosecution has been commented upon. But there was no use in examining her as she was a hostile witness. Reading the statements of the complainant and Narasimiah with that of Appaya the nephew of the 1st accused who states that both the accused were closeted with the complainant in the house of Motakka. there can be no doubt that this part of the case is also true

6. I agree with the Government Advocate in thinking that this is a fit case for appeal and I beg that the

Government may be pleased to prefer an appeal against the finding and sentence of the Learned Judge. Till recently an appeal to Chief Court under Section 417 of the Criminal Procedure Code against an acquittal by one of the Judges sitting as a Sessions Judge was thought to be unsustainable. But the Chief Court have recently held in a Full Bench decision, that the Chief Court disposing of Sessions Cases is only a Court of Sessions, and that the sentence of death passed by the Judge presiding for the time being over that Court is subject to confirmation of the Chief Court under Section 374 of the Criminal Procedure Code. The question whether an appeal also lies from an order of acquittal passed by a Judge of the Chief Court presiding over a Sessions Court has not yet been directly decided. But from the resoning adopted in the above Full Bench decision, it follows that an appeal can also lie to the Chief Court. I have therefore to request that the Government Advocate may be instructed to take the necessary action in the matter.

7. I may in passing be permitted to state here that though the case may at first sight appear to be a trivial one, it is a matter of grave importance, the accuseds being lawless rowdies long terrorising the people in the locality and whose subsequent action (with the details of which I do not wish to trouble the Government) has unfortunately led to the commission of suicide by two old innocent people Gorla Muniappa and his concubine Akkayamma, the poor victims of the dacoity and it is absolutely necessary in the interests of efficient Criminal Administration that the intimidators against Law and Order should be made an example of so as to prevent them from lapsing into their old habits and deter others from following their examples.

8. Copy of the Judgment in the case and the depositons

Vgl. Nr. 7-3 Okt 3 Nov

Vgl.

Köln

12 Aug. 09

Hrn Dr. Rechtsanwalt

Es thut mir leid, dass ich Ihnen
Ihren Wunsch nicht erfüllen
kann, da ich Ihnen Ihre
Bilder in den Tagen, wo
Sie hier waren, nicht
zurückgeben kann. Ich habe
sie nämlich [illegible]
[illegible] und sie
[illegible] noch nicht
[illegible] Ich bitte
Sie, mir dies nicht übel
zu nehmen.

Bangalore
21. 8. 09

Dear Sir,

No date has as yet been fixed for hearing Venkataramana Reddy's Crl. appl. If no appeal on behalf of Govt be filed in 5 or 6 days when, I believe, the time granted for feling an appeal (on behalf of Govt) expires, the said appeal will be posted for hearing on the earliest date on which the same bench sits.

Yours Sincerely
S. Narayana Rao

G.R.S. 28]

Cs. File No 52-09

Serial No. 2

Diary No. of letter replied to—

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT

the 190

ate of issue 1 9 09

Signed by Nivd'Souza

READ— No. 1506/53 Letter dated the 12th August 1909 from the District Magistrate of Kolar requesting that the Govt. Advocate in my Srie may be instructed to file an appeal in the

ORDER THEREON.—No. Chief Court against the order of acquittal of Subbraya Appa, accused (under Secs 330 & 348 I.P.C.) in Sessions Case No 41 of 1908-09 on the file of the Chief Court

Order over

1 Venkata Swamy Reddy (under Sec 330 I P C) and

SUBJECT

Order thereon in J 654-5
C.S 52-09-2 8/1/09

Under Section 417
of the Code of Criminal
Procedure, 1904, the Govt
in Mysore
Advocate is directed to
file an appeal to the
Chief Court against the
order of Venkataswami Reddy and Subbarayappa
order of acquittal passed
in the case referred to
above, and to report the
result of the same in
due course.

Secretary

SN/14/8/09

To The District Magistrate, Kolar,
(Returning the enclosures)

a Govt Advocate in Mysore (with an
Authenticated Copy of Judgment in
the Case.

HES
14.8.09

No 63.

Office of the Government Advocate in Mysore,

Bangalore dated, 26th August 1909.

From,

The Government Advocate in Mysore,

Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja of Mysore, General and Revenue Departments.

Sir;

With reference to your D. O. No.60 dated -- 24th Instant, I have the honour to inform that --- Venkatasamy Reddy's criminal appeal was got adjourned to Monday the 20th Proximo.

I have the honour to be,

Sir,

Your most obedient servant,

S. Narayana Rao

Government Advocate.

No. 117.
Encl: one judgment.

Office of the Government Advocate in Mysore.

Bangalore dated, 12 th November 1909.

From,

The Government Advocate in Mysore,

Bangalore.

To,

The Secretary to the Government of H.H. the Maharaja of Mysore General and Revenue Departments.

Sir,

I have the honour to enclose a copy of judgment of the Chief Court in Criminal Appeal No.22 of 1909-10, preferred on behalf of Government in pursuance of the the Proceedings of Government No. J 654-5/Cts 52-09-2, dated 1st September 1909, against the order of acquittal in Chief -- Court Sessions Case No.41 of 1908-09.

It will be observed that section 417 Criminal Procedure Code declares that an appeal by Government lies -- against an original or appellate order of acquittal passed by any court other than the Chief Court. The question then arises whether the order of acquittal in the said Sessions case was passed by the Chief Court.

Under the Criminal Procedure Code the Chief Court has no original criminal jurisdiction. The provisions in the British Indian Criminal Procedure Code relating to the trial of Sessions cases by the High Court have been omitted in the Mysore Procedure Code. The said sessions case was tried under the provisions of clause (6) of section 12 of the Chief Court Regulation which says that the Chief Court will for the purpose of exercising the original Criminal jurisdiction depute one of its Judges who will conduct his proceedings in the same manner and subject to the same proceedure as if he were appointed Judge of the Court of ---- Sessions.

In

14

In these circumstances, if the Judge who tried the Sessions case in question did so as a Judge of the Chief Court, the provisions of the Code in sections 374 to 379 as to the submission of a sentence of death to the Chief Court would be inapplicable. But a majority of the Judges of the Chief Court held in a Full Bench Case reported on page 1 of Vol. XIV Mysore Chief Court Reports that a Judge of the Chief Court exercising original Criminal jurisdiction "has no greater powers than those of a Sessions Judge, and that any sentence of death passed by him is subject to the confirmation by the Chief Court". The effect of this decision in my humble opinion is, that an order of acquittal passed in the Sessions trial held by a Judge of the Chief Court is one passed by a Sessions Judge, and that therefore an appeal by Government lies against such an order.

Though this view of the case was urged in arguing the appeal, no reference is made to it in the judgment which simply follows a previous decision of the Court reported on page 114 of Volume VII Mysore Chief Court Reports.

This is a tacit admission that the dissentient view of Mr. Justice Nanjundiah in the full bench case quoted above is the correct one.

If it be thought desirable to make an order of acquittal passed by a Judge of the Chief Court appealable, an alteration in the wording of section 417 will have to be made.

I have the honour to be,

Sir,

Your most obedient servant,

S. Narayana Rao

Government Advocate.

15

In the Chief Court of Mysore, at Bangalore

Monday the 1st day of November 1909.

Present.

Mr. Justice Stanley Ismay, C. S. I., Chief Judge,

and

Mr. Justice Krishna Rao, Rao Bahadur.

Criminal Appeal No.22 of 1909-10.

The Government of Mysore,
(By Mr.S.Narayana Rao, - Government Advocate). } Appellant - Complainant.

VS.

1.Venkataswamy Reddy
2.Subbarayappa. } Respondents - Accused.

Appeal against the order of acquittal in Sessions case No. 41 of 1908-09 on the file of this Court (Sessions Side).

This appeal coming on for hearing on Monday, the 18th day of October 1909, the Court delivered the following

JUDGMENT.

This is an appeal by the Government against an order of acquittal. We are asked to dissent from the view taken by -- this Court in Government Vs. Syed Ahmed Sab (VII Mysore C.C.R. 114) and to hold that the present appeal lies. We have heard counsel and have considered the question. We have only to say that we see no reason to dissent from the decision referred to The wording of section 417 of the Code is perfectly clear and we could only come to a different decision by reading into the section a great deal which is not to be found therein. The -- decision of this Court was passed 7 years ago and from the -- fact that the section has never been amended, we are justified in assuming that the decision was in accordance with the ---- intention of the Government. We hold that the present appeal does not lie and we dismiss it.

"C O P Y"

(Sd) Ismay,
Chief Judge.
(Sd) P.S. Krishna Rao,

S. Narayana Rao
Government Advocate.